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Well-being and political obligation

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Locke's contract theory has had a significant influence on politics in Western society. Although it lost its influence during the C19th, Rawls developed a new contract theory after the Second World War. However, on the subject of Political Obligation – the duty to obey the government – Rawls is not contractarian. To justify Political Obligation, Rawls introduces another concept: the natural duty of justice. According to Rawls, the natural duty of justice applies to all individuals and requires that they obey the government, so long as it is just, irrespective of any contracts. There are two reasons why Rawls thinks, contrary to Locke, that Political Obligation is a natural duty independent of contracts. Firstly, Locke's contract theory is based on a false history: the idea of the State of Nature. Secondly, Locke's contract theory cannot but admit the existence of independents, i.e. those who refuse to make contracts. The existence of independents is problematic because they might threaten the well-being of subjects under the government and make it unstable. In this paper, I demonstrate that these criticisms are based on a misunderstanding of Locke and argue for the plausibility of Locke's contract theory.

Political obligation and Locke's contract theory

In this paper, I re-examine the plausibility of John Locke's contract theory through considering the issue of Political Obligation.¹ I divide this paper into three sections. First, I explain the problem of Political Obligation and Locke's contract theory. In the second section, I explain the Rawls's idea of the natural duty of justice. Finally, I argue for the plausibility of

¹ T. H. Green firstly uses the term "Political Obligation". Dagger, 2010, p. 2; Horton, 2010, p. 1.

Locke's contract theory about the problem of Political Obligation.

The question of why we must obey the government is the problem of Political Obligation.² This problem has had a long history in Ethics. It arises, for example, in Plato's "Crito" and constitutes an important theme in Sophocles's tragedy "Antigone". From ancient Greek times until now, scholars have suggested many different answers to this problem. Among them, one of the simplest answers is based on social contract theory. Locke argues in his *Two Treatises of Government* (1689) that Political Obligation is based on the contract of individuals.³ Locke begins his contract theory with the description of the State of Nature, which is a state without any government. In the State of Nature, there is the Law of Nature, according to which all individuals are equal and have natural rights to their own life, liberty, and properties (ST.4, 6). Additionally, the Law of Nature states that all individuals in the State of Nature must not injure and threaten other's natural rights and well-being:

The *State of Nature* has a Law of Nature to govern it, which obliges every one:
And Reason, which is that Law, teaches all Mankind, who will but consult it,
that being all equal and independent, no one ought to harm another in his Life,
Health, Liberty, or Possessions (ST. 6).

Due to the Law of Nature, the State of Nature is basically peaceful. If, however, there is some conflict among individuals, each has the natural right to judge this conflict in terms with the Law of Nature. Locke argues that

And that all Men may be restrained from invading others Rights and from doing
hurt to one another, and the Law of Nature be observed, which willeth the Peace
and Preservation of all Mankind, the Execution of the Law of Nature is in that
State, put into every Mans hands, whereby every one has a right to punish the
transgressors of that Law to such a Degree, as may hinder its Violation (ST.7).

In other words, every one can punish criminals and make them compensate their victims in line with the Law of Nature (ST. 10).

However, the State of Nature tends to be unstable. Therefore, individuals in the State of Nature make contracts with each other in order to protect their natural rights and well-

² For an overview of this problem, see Hampton, 1997, pp. 3–38; Simmons, 2002, pp. 17–37; 2008, pp. 39–66; Dagger, 2010, pp. 1–29; Klosko, 2012, pp. 511–526.

³ Locke, *Two Treatises of Government*, ed., P. Laslett, Cambridge: Cambridge University Press, 1988. ST [Second Treatise], followed by paragraph number.

being (ST. 123–127). In essence, this contract means that individuals leave the State of Nature and enter into the condition of being subjects to a government. The government makes laws to protect them. In order to secure the protection of their well-being through the government, individuals must have obligations to the government. Thus, Locke justifies Political Obligation with the idea of a contract (ST.95).

While Locke's contract theory has had a significant influence on politics in Western society, it has lost its influence in Ethics because of many criticisms that have been raised against it.⁴ As a philosophical position, Locke's contract theory died out during the 19th century.

Rawls's natural duty of justice.

After Second World War, John Rawls developed a new social contract theory in his *A Theory of Justice* (1971). There are two central differences between the contract theory of Rawls and that of Locke. Firstly, the contract that Rawls uses is not actual but hypothetical. In other words, whereas Locke envisions the contract to be made by actual persons in the real world, Rawls takes it to be sufficient that the contract be made by hypothetical persons in a hypothetical world, which he terms the "original position". He states that

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice.⁵

Moreover, the undertakings [contracts] referred to are purely hypothetical: a contract view holds that certain principles would be accepted in a well-defined initial situation.⁶

Rawls is not, therefore, an actual contractarian, but a hypothetical contractarian.

Secondly, while Locke uses the concept of contract to justify Political Obligation, Rawls uses the concept of contract instead to justify the principle of justice in the original position:

⁴ Among them, Hume's criticism might be the most important one. Hume, "Of the Original Contract", in *Essays Moral, Political, and Literary*, ed., Eugene F. Miller, Revised Edition, Liberty Fund, 1987.

⁵ Rawls, 1971/1999, p.12/p.11.

⁶ Rawls, 1971/1999, p. 16/p. 14.

My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original contract.⁷

He goes on to claim that:

In particular, the content of the relevant agreement is not to enter a given society or to adopt a given form of government, but to accept certain moral principles.⁸

As he does not appeal to contracts in order to justify Political Obligation, Rawls introduces another concept in order to do so: the natural duty of justice. According to Rawls, the natural duty of justice applies to all individuals and requires that they obey their government, so long as it is just, irrespective of any contracts which they may have made:

Now in contrast with obligation, it is characteristic of natural duties that they apply to us without regard to our voluntary acts.⁹

From the stand point of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.¹⁰

Due to his appeal to the Duty of Justice, Rawls is not a contractarian about Political Obligation.

Some commentators claim that Rawls appeals to Political Obligation, rather than contracts, because of two weaknesses in Locke's contract theory. Firstly, Locke's contract theory rests on an incorrect historical premise, namely, his account of the State of Nature.¹¹

⁷ Rawls, 1971/1999, p. 11/p. 10.

⁸ Rawls, 1971/1999, p. 16/p. 14.

⁹ Rawls, 1971/1999, p. 114/p. 98.

¹⁰ Rawls, 1971/1999, p. 115/p. 99.

¹¹ Aaron insists that Locke's contract theory is based on a "bad history". Aaron, 1971, p. 273.

Although, many contractarians, such as Locke, presuppose the existence of the State of Nature, in actuality there was no State of Nature that existed prior to the establishment of the government. As Will Kymlicka argues,

Why are social contract arguments thought to be weak? Because they seem to rely on very implausible assumptions. They ask us to imagine a state of nature before there is any political authority.¹²

By making his original position hypothetical from the beginning, Rawls avoids such criticism.¹³

Secondly, it does not follow from Locke's contract theory that all individuals under the government ought to obey that government. Locke, therefore, cannot justify Political Obligation of all individuals in the territory under the government. Due to his presupposition that all individuals are naturally equal, Locke cannot but admit the existence of those who will refuse to make contract. Actual consent is required, as Locke makes clear in the following:

Men being, as has been said, by Nature, all free, equal and independent, no one can be put out of this Estate, and subjected to the Political Power of another, without his own *Consent*(ST.95).

According to Locke, because all individuals are naturally equal, no one can force another to make a contract; therefore, it is not the case that all can be made to submit to government. Such force injures the other person's natural liberty. Thus, Nozick is correct when he claims that

Locke held that no one may be forced to enter civil society; some may abstain and stay in the liberty of the state of nature, even if most choose to enter.¹⁴

Due to this, Locke's contract theory cannot but allow the existence of, what Nozick terms, "independents" in his *Anarchy, State, and Utopia* (1974), i.e. those who refuse to make the contract to accept the protection of, and submit to, the government.¹⁵

The reason that this is problematic is that it would be difficult for the government to keep peace in a territory in which there are independents. Because independents live in the

¹² Kymlicka, 2001, p. 60.

¹³ Lovett, 2011, pp. 19–20.

¹⁴ Nozick, 1974, p. 54.

¹⁵ Nozick, 1974, p. 54.

State of Nature, they have no Political Obligation. They need not respect any government. Therefore, they might threaten the well-being of subjects under the government and make it unstable.¹⁶

Rawls avoids such instability by appealing instead to the natural duty of justice.¹⁷ An important advantage of natural duty is its generality; it binds all individuals in the government's territory whether or not they consent to it.¹⁸ Thus, the natural duty need not admit the existence of independents in the territory under the government. Political stability is, therefore, one reason why Rawls regards Political Obligation as a natural duty.

Rawls's discussion has had a considerable influence on the problem of Political Obligation. Following Rawls's argument, some scholars, for example, Jeremy Waldron and Christopher H. Wellman, have developed their own theories of the natural duty of Political Obligation.¹⁹ Currently, therefore, the natural duty approach is prominent in this area.²⁰

Counterarguments from Locke's contract theory.

In this section, I focus not on the contents of the natural duty approach, but on its arguments. I examine two arguments in particular. As I pointed out, firstly, Locke's contract theory is based on a false history. Secondly, because Locke's contract theory cannot but allow the existence of independents in the government's territory, this approach might threaten the well-being of those who are subject to the government. In my opinion, these criticisms are based on a misunderstanding of Locke. I will examine these points in turn.

First of all, Locke does not claim that the State of Nature is meant to be an historical account. Locke himself emphasizes it many times. He defines the State of Nature as the human relations that obtain amongst those who share no common government.

Want of a common Judge with Authority, puts all Men in a state of Nature
(ST.19).

...those who have no such common Appeal, I mean on Earth, are still in the state of Nature, each being, where there is no other, Judge for himself, and

¹⁶ Nozick, 1974, pp. 54–56.

¹⁷ Rawls, 1971/1999, p. 336/p. 296

¹⁸ Klosko, 2012, p. 521.

¹⁹ Waldron, 1993; Wellman, 2001; 2004; 2005.

²⁰ Klosko, 2012, p. 521.

Executioner; which is, as I have before she'wd it, the perfect *state of Nature* (ST.87).

In other words, want of a common government puts all individuals in the State of Nature. For instance, Locke points out that all rulers of independent governments all over the world are in the State of Nature:

'Tis often asked as a mighty Objection, *Where are*, or ever were, there any Men *in such a State of Nature*? To which it may suffice as an answer at present; That since all *Princes* and Rulers of *Independent* Governments all thorough the World, are in a State of Nature, 'tis plain the World never was, nor ever will be, without Numbers of Men in that State (ST.14).

So, the idea of the State of Nature is, in a word, a relational one. The State of Nature is not only in the past, but also in the present and future. Therefore, the interpretation of the state of Nature as historical is false.

How about second criticism? Locke must indeed admit the existence of independents in the territory under the government.²¹ Because Locke repeatedly argues that all individuals are naturally equal, he cannot justify the Political Obligation of all individuals as Rawls can. However, this need not lead to instability that was at the heart of the objection. It is too hasty to conclude that a Lockean government cannot keep the peace and protect the well-being of its subjects because, from Locke's point of view, any independent must not injure the rights and well-being of subjects under the government. Due to the fact that independents refuse to make contracts, they have no Political Obligation. However, although they need not respect the government because of this, they must respect the rights and well-being of all people, including subjects under the government, in terms of the Law of Nature.

To begin with, an independent and a subject are in the State of Nature in their relation with each other, since they share no common government. As I explored earlier, according to Locke, in the State of Nature all individuals must obey the Law of Nature which orders them not to injure each other. Even if independents have no Political Obligation, they must not threaten the natural rights and well-being of any person, which includes all subjects under the government. In the end, in order not to break the Law of Nature, all independents must behave or act as if they were subjects of the government.

²¹ Farrell, 1979, pp. 524–529; Kilcullen, 1983, pp. 340; Lloyd Thomas, 1995, pp. 42–44; Kelly, 2007, pp. 98–99; Casalini, 2008, p. 121.

There remains the question of how a subject can resolve a conflict between himself or herself and an independent if, for example, the latter injures the estate of the former. In that case, the injured subject can punish the independent as a criminal and make them pay for the damage in terms of the Law of Nature. Additionally, and more importantly, according to Locke, other subjects can also help the injured subject punish the independent and make him or her compensate the injured subject, for they too are in the State of Nature in relation to the independent:

And any other Person who finds it[to seek reparation] just, may also joyn with him that is injur'd, and assist him in recovering from the Offender, so much as may make satisfaction for the harm he has suffer'd (ST. 10).

Thus, the government can resolve this conflict on behalf of subjects in terms of the Law of Nature. With appeal only to the Law of Nature, the government can keep peace in the territory and protect the well-being of all subjects from independents.

It must also be the case, however, that an independent can resolve a conflict between himself or herself and a subject if, for example, the subject injures the estate of the independent. In this case, the independent can also punish the subject in terms of the Law of Nature. This can, however, be difficult for the independent to do since they do not have the protection of any government. Without help from the government, the independent may have difficulty in enforcing justice and punishing the subject. Sooner or later, therefore, all independents will try to make a contract in order to protect his or her property. This would lead to a state where there were no independents in the territory under the government. This explains how the existence of independents need not be a threat for the stability of the government.

Having provided rebuttals to the objections raised, we need not prefer Rawls's theory to Locke's on account of the criticisms brought against the latter. When it comes to the problem of Political Obligation, Locke's contract theory remains a strong account of the solution.

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